

March 16, 1998

Col. Leo W. Haseman  
Director, Division of Enforcement  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155-4047

RE: In the Matter of the Trespass Citation Issued to Ronald William Rice;  
OAH Docket No. 6-2000-11511-2

Dear Colonel Haseman:

A prehearing conference was held on March 5, 1998, involving Ronald Rice, Conservation Officer Gary Thell, Tom Braesch of the Union Pacific Railroad Company, and the undersigned Administrative Law Judge.

After discussing the facts and circumstances surrounding this matter, it was agreed that no formal hearing would be needed, and that I could decide the matter based upon what I had heard that afternoon. I have reviewed the facts and the law, and have determined that the citation should be DISMISSED because there has been no showing that the area was, in fact, posted as required by statute.

Essentially, Mr. Rice was snowmobiling on a trail, but got separated from the trail. He was riding with his son, and twice his son became stuck in deep snow. In order to try to get out of the snow, they followed some snowmobile tracks which paralleled the railroad tracks, seeking a driveway or path which they could take to return to the main trail. They were on railroad property. They entered onto the railroad property from a field, not from a road or trail. They entered between crossings, rather than at a crossing. They did not see any "no trespassing" signs and, the next day, Mr. Rice went back to the area and found that there were no signs or postings prohibiting trespassing anywhere between the point where they entered onto the railroad property to the point where they were stopped by Mr. Braesch. Mr. Rice estimated this length to be approximately three-eighths of a mile, which is approximately 2,000 feet.

Mr. Braesch stated that the railroad posted its corridor land at every public crossing, and at most private crossings as well. He estimated the public crossings to be at one-mile intervals (5,280 feet).

Minn. Stat. § 97B.001, subd. 4 requires posting signs once each year at specified intervals in order to take advantage of the civil trespass process. The land must be posted either (1) at intervals of 1,000 feet or less along the boundary of an area, or at intervals of 500 feet or less if the area is wooded and boundary lines are not clear; or (2) mark the primary corners of each parcel and access roads and trails at the

point of entrance to each parcel, except that corners only accessible through agricultural land need not be posted.

Mr. Braesch could not testify that either of the above tests had been met. In other words, he could not testify that signs were posted at least every 1,000 feet, nor could he testify that there were signs at the four corners of the "parcel". In situations such as the railroad's here, where there is a long, very thin piece of land which extends for tens of miles, the Administrative Law Judge believes that there must be some standard of reasonableness used when interpreting the law. Because of its unusual shape and length, the appropriate method of posting this land is to post it using the first method, which is at intervals of 1,000 feet or less, or in a wooded area where boundary lines are not clear, at intervals of 500 feet or less. By its very nature, a railroad right-of-way does have clear boundary lines, so the 1,000 feet standard should apply.

Based upon the agreement of the parties that this case should be decided without any further proceedings, I am recommending to you that the citation in this matter be dismissed.

Pursuant to Minn. Stat. § 116.072, subd. 6(e), the Commissioner may not issue a final order in this matter until at least five days after receipt of this letter. Mr. Rice may, during that five-day period, comment to the Commission on this recommendation, and the Commissioner must consider the comments. Once the Commissioner has made his final decision in this matter, a copy of that decision must be served upon Mr. Rice and the Administrative Law Judge.

I am closing our file in this matter, and returning the record to you.

Sincerely,

AWK/lr  
Enclosures  
cc: Ronald William Rice  
Conservation Officer Gary Thell  
Tom Braesch

ALLAN W. KLEIN  
Administrative Law Judge  
Telephone: 612/341-7609

P.S.: This was the first case where Mr. Braesch testified in detail about the manner of posting the railroad's land. It is also the first case (that I have been involved with) where the snowmobiler entered the railroad's land at a point other than at a posted crossing. Therefore, I am not concerned about the apparent inconsistency between the decision in this case and the decision in some prior cases. Unless you rule to the contrary, I will follow the 1,000-foot requirement set forth above in all future cases involving this railroad corridor.

AWK